

Introduced by

Judiciary Committee

(At the request of the Commission on Uniform State Laws)

1 A BILL for an Act to create and enact chapter 41-08 and two new sections to chapter 41-09 of
2 the North Dakota Century Code, relating to the Uniform Commercial Code revised article 8
3 pertaining to investment securities, investment property, and security interests arising in
4 purchase or delivery of financial assets; to amend and reenact subsection 1 of section
5 10-19.1-67, subsection 3 of section 10-32-28, subdivision e of subsection 2 of section
6 41-01-05, subsection 2 of section 41-01-16, subdivision f of subsection 1 of section 41-04-04,
7 subsection 2 of section 41-05-14, subsection 6 of section 41-09-03, sections 41-09-05,
8 41-09-06, subsections 1 and 4 of section 41-09-16, subdivision d of subsection 1 of section
9 41-09-22, subsection 1 of section 41-09-23, subsection 1 of section 41-09-24, sections
10 41-09-25, 41-09-26, subsections 1 and 3 of section 41-09-27, section 41-09-30, and
11 subsections 1 and 7 of section 41-09-33 of the North Dakota Century Code, relating to adoption
12 of revised article 8; and to repeal chapter 10-18.1 and the present chapter 41-08 of the North
13 Dakota Century Code, relating to the Uniform Act for the Simplification of Fiduciary Security
14 Transfers and investment securities.

15 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

16 **SECTION 1. AMENDMENT.** Subsection 1 of section 10-19.1-67 of the North Dakota
17 Century Code is amended and reenacted as follows:

18 1. A new share certificate may be issued pursuant to section ~~41-08-41~~ 41-08-38 in
19 place of one that is alleged to have been lost, stolen, or destroyed.

20 **SECTION 2. AMENDMENT.** Subsection 3 of section 10-32-28 of the North Dakota
21 Century Code is amended and reenacted as follows:

22 3. Notwithstanding any other provision of law, for the purpose of any law relating to
23 security interests, a membership interest, governance rights, and financial rights
24 are each a general intangible, as defined in section 41-09-06, and not a certificated

1 security as defined in ~~subdivision a of subsection 1 of section 41-08-02~~, an
2 uncertificated security as defined in ~~subdivision b of subsection 1 of section~~
3 41-08-02, chattel paper as defined in ~~subdivision b of subsection 1 of section~~
4 41-09-05, an instrument as defined in ~~subdivision i of subsection 1 of section~~
5 41-09-05, or an account as defined in section 41-09-06.

6 **SECTION 3. AMENDMENT.** Subdivision e of subsection 2 of section 41-01-05 of the
7 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8 e. Applicability of the chapter on investment securities. Section ~~41-08-06~~
9 41-08-10.

10 **SECTION 4. AMENDMENT.** Subsection 2 of section 41-01-16 of the North Dakota
11 Century Code is amended and reenacted as follows:

12 2. Subsection 1 does not apply to contracts for the sale of goods (section 41-02-08)
13 nor of securities (section ~~41-08-35~~ 41-08-13) nor to security agreements (section
14 41-09-16).

15 **SECTION 5. AMENDMENT.** Subdivision f of subsection 1 of section 41-04-04 of the
16 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

17 f. "Documentary draft" means a draft to be presented for acceptance or
18 payment if specified documents, certificated securities (section 41-08-02), or
19 instructions for uncertificated securities (section ~~41-08-24~~ 41-08-02), or other
20 certificates, statements, or the like are to be received by the drawee or other
21 payor before acceptance or payment of the draft.

22 **SECTION 6. AMENDMENT.** Subsection 2 of section 41-05-14 of the 1995
23 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24 2. Unless otherwise agreed, when documents appear on their face to comply with the
25 terms of a credit but a required document does not in fact conform to the
26 warranties made on negotiation or transfer of a document of title (section
27 41-07-36) or of a certificated security (section ~~41-08-22~~ 41-08-08) or is forged or
28 fraudulent or there is fraud in the transaction:
29 a. The issuer must honor the draft or demand for payment if honor is demanded
30 by a negotiating bank or other holder of the draft or demand which has taken
31 the draft or demand under the credit and under circumstances that would

make it a holder in due course (section 41-03-28) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (section 41-07-31) or a bona fide purchaser of a certificated security (section 41-08-18); and

- b. In all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery, or other defect not apparent on the face of the documents, but a court of appropriate jurisdiction may enjoin the honor.

SECTION 7. Chapter 41-08 of the North Dakota Century Code is created and enacted as follows:

41-08-01. (8-101) Short title. This chapter may be cited as Uniform Commercial Code - Investment Securities.

41-08-02. (8-102) Definitions.

1. In this chapter:

- a. "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.
- b. "Bearer form", as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an endorsement.
- c. "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.
- d. "Certificated security" means a security that is represented by a certificate.
- e. "Clearing corporation" means:
- (1) A person registered as a "clearing agency" under the federal securities laws;
- (2) A federal reserve bank; or
- (3) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a

clearing corporation, including promulgation of rules, are subject to
regulation by a federal or state governmental authority.

f. "Communicate" means to:

(1) Send a signed writing; or

(2) Transmit information by any mechanism agreed upon by the persons
transmitting and receiving the information.

g. "Endorsement" means a signature that alone or accompanied by other words
is made on a security certificate in registered form or on a separate document
for the purpose of assigning, transferring, or redeeming the security or
granting a power to assign, transfer, or redeem it.

h. "Entitlement holder" means a person identified in the records of a securities
intermediary as the person having a security entitlement against the securities
intermediary. If a person acquires a security entitlement by virtue of
subdivision b or c of subsection 2 of section 41-08-41, that person is the
entitlement holder.

i. "Entitlement order" means a notification communicated to a securities
intermediary directing transfer or redemption of a financial asset to which the
entitlement holder has a security entitlement.

j. "Financial asset", except as otherwise provided in section 41-08-03, means:

(1) A security;

(2) An obligation of a person or a share, participation, or other interest in a
person or in property or an enterprise of a person, which is, or is of a
type, dealt in or traded on financial markets, or which is recognized in
any area in which it is issued or dealt in as a medium for investment; or

(3) Any property that is held by a securities intermediary for another person
in a securities account if the securities intermediary has expressly
agreed with the other person that the property is to be treated as a
financial asset under this chapter.

As context requires, the term means either the interest itself or the means by
which a person's claim to it is evidenced, including a certificated or
uncertificated security, a security certificate, or a security entitlement.

- 1 k. "Good faith", for purposes of the obligation of good faith in the performance or
2 enforcement of contracts or duties within this chapter, means honesty in fact
3 and the observance of reasonable commercial standards of fair dealing.
- 4 l. "Instruction" means a notification communicated to the issuer of an
5 uncertificated security which directs that the transfer of the security be
6 registered or that the security be redeemed.
- 7 m. "Registered form", as applied to a certificated security, means a form in
8 which:
- 9 (1) The security certificate specifies a person entitled to the security; and
10 (2) A transfer of the security may be registered upon books maintained for
11 that purpose by or on behalf of the issuer, or the security certificate so
12 states.
- 13 n. "Securities intermediary" means:
- 14 (1) A clearing corporation; or
15 (2) A person, including a bank or broker, that in the ordinary course of its
16 business maintains securities accounts for others and is acting in that
17 capacity.
- 18 o. "Security", except as otherwise provided in section 41-08-03, means an
19 obligation of an issuer or a share, participation, or other interest in an issuer
20 or in property or an enterprise of an issuer:
- 21 (1) Which is represented by a security certificate in bearer or registered
22 form, or the transfer of which may be registered upon books maintained
23 for that purpose by or on behalf of the issuer;
- 24 (2) Which is one of a class or series or by its terms is divisible into a class
25 or series of shares, participations, interests, or obligations; and
- 26 (3) Which:
- 27 (a) Is, or is of a type, dealt in or traded on securities exchanges or
28 securities markets; or
- 29 (b) Is a medium for investment and by its terms expressly provides
30 that it is a security governed by this chapter.
- 31 p. "Security certificate" means a certificate representing a security.

q. "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in sections 41-08-41 through 41-08-51.

r. "Uncertificated security" means a security that is not represented by a certificate.

2. Other definitions applying to this chapter and the sections in which they appear are:

a. "Appropriate person". Section 41-08-07.

b. "Control". Section 41-08-06.

c. "Delivery". Section 41-08-24.

d. "Investment company security". Section 41-08-03.

e. "Issuer". Section 41-08-17.

f. "Overissue". Section 41-08-26.

g. "Protected purchaser". Section 41-08-29.

h. "Securities account". Section 41-08-41.

3. In addition, chapter 41-01 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

4. The characterization of a person, business, or transaction for purposes of this chapter does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

41-08-03. (8-103) Rules for determining whether certain obligations and interests are securities or financial assets. In this chapter:

1. A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

2. An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. "Investment company security" does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

- 1 3. An interest in a partnership or limited liability company is not a security unless it is
2 dealt in or traded on securities exchanges or in securities markets, its terms
3 expressly provide that it is a security governed by this chapter, or it is an
4 investment company security. However, an interest in a partnership or limited
5 liability company is a financial asset if it is held in a securities account.
- 6 4. A writing that is a security certificate is governed by this chapter and not by chapter
7 41-03, even though it also meets the requirements of that chapter. However, a
8 negotiable instrument governed by chapter 41-03 is a financial asset if it is held in
9 a securities account.
- 10 5. An option or similar obligation issued by a clearing corporation to its participants is
11 not a security but is a financial asset.
- 12 6. A commodity contract, as defined in section 11 of this Act, is not a security or a
13 financial asset.

14 **41-08-04. (8-104) Acquisition of security or financial asset or interest therein.**

- 15 1. A person acquires a security or an interest therein, under this chapter, if:
16 a. The person is a purchaser to whom a security is delivered pursuant to section
17 41-08-27; or
18 b. The person acquires a security entitlement to the security pursuant to section
19 41-08-41.
- 20 2. A person acquires a financial asset, other than a security, or an interest therein,
21 under this chapter, if the person acquires a security entitlement to the financial
22 asset.
- 23 3. A person who acquires a security entitlement to a security or other financial asset
24 has the rights specified in sections 41-08-41 through 41-08-51, but is a purchaser
25 of any security, security entitlement, or other financial asset held by the securities
26 intermediary only to the extent provided in section 41-08-43.
- 27 4. Unless the context shows that a different meaning is intended, a person who is
28 required by other law, regulation, rule, or agreement to transfer, deliver, present,
29 surrender, exchange, or otherwise put in the possession of another person a
30 security or financial asset satisfies that requirement by causing the other person to
31 acquire an interest in the security or financial asset pursuant to subsection 1 or 2.

41-08-05. (8-105) Notice of adverse claim.

1. A person has notice of an adverse claim if:
 - a. The person knows of the adverse claim;
 - b. The person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or
 - c. The person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation required would establish the existence of the adverse claim.
2. Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.
3. An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:
 - a. One year after a date set for presentment or surrender for redemption or exchange; or
 - b. Six months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.
4. A purchaser of a certificated security has notice of an adverse claim if the security certificate:
 - a. Whether in bearer or registered form, has been endorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or
 - b. Is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

- 1 5. Filing of a financing statement under chapter 41-09 is not notice of an adverse
2 claim to a financial asset.

3 **41-08-06. (8-106) Control.**

- 4 1. A purchaser has "control" of a certificated security in bearer form if the certificated
5 security is delivered to the purchaser.
- 6 2. A purchaser has "control" of a certificated security in registered form if the
7 certificated security is delivered to the purchaser, and:
- 8 a. The certificate is endorsed to the purchaser or in blank by an effective
9 endorsement; or
- 10 b. The certificate is registered in the name of the purchaser, upon original issue
11 or registration of transfer by the issuer.
- 12 3. A purchaser has "control" of an uncertificated security if:
- 13 a. The uncertificated security is delivered to the purchaser; or
- 14 b. The issuer has agreed that it will comply with instructions originated by the
15 purchaser without further consent by the registered owner.
- 16 4. A purchaser has "control" of a security entitlement if:
- 17 a. The purchaser becomes the entitlement holder; or
- 18 b. The securities intermediary has agreed that it will comply with entitlement
19 orders originated by the purchaser without further consent by the entitlement
20 holder.
- 21 5. If an interest in a security entitlement is granted by the entitlement holder to the
22 entitlement holder's own securities intermediary, the securities intermediary has
23 control.
- 24 6. A purchaser who has satisfied the requirements of subdivision b of subsection 3 or
25 subdivision b of subsection 4 has control even if the registered owner in the case
26 of subdivision b of subsection 3 or the entitlement holder in the case of
27 subdivision b of subsection 4 retains the right to make substitutions for the
28 uncertificated security or security entitlement, to originate instructions or
29 entitlement orders to the issuer or securities intermediary, or otherwise to deal with
30 the uncertificated security or security entitlement.

7. An issuer or a securities intermediary may not enter into an agreement of the kind described in subdivision b of subsection 3 or subdivision b of subsection 4 without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

41-08-07. (8-107) Whether endorsement, instruction, or entitlement order is effective.

1. "Appropriate person" means:

- a. With respect to an endorsement, the person specified by a security certificate or by an effective special endorsement to be entitled to the security;
- b. With respect to an instruction, the registered owner of an uncertificated security;
- c. With respect to an entitlement order, the entitlement holder;
- d. If the person designated in subdivision a, b, or c is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or
- e. If the person designated in subdivision a, b, or c lacks capacity, the designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.

2. An endorsement, instruction, or entitlement order is effective if:

- a. It is made by the appropriate person;
- b. It is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under subdivision b of subsection 3 or subdivision b of subsection 4 of section 41-08-06; or
- c. The appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

- 1 3. An endorsement, instruction, or entitlement order made by a representative is
2 effective even if:
- 3 a. The representative has failed to comply with a controlling instrument or with
4 the law of the state having jurisdiction of the representative relationship,
5 including any law requiring the representative to obtain court approval of the
6 transaction; or
- 7 b. The representative's action in making the endorsement, instruction, or
8 entitlement order or using the proceeds of the transaction is otherwise a
9 breach of duty.
- 10 4. If a security is registered in the name of or specially endorsed to a person
11 described as a representative, or if a securities account is maintained in the name
12 of a person described as a representative, an endorsement, instruction, or
13 entitlement order made by the person is effective even though the person is no
14 longer serving in the described capacity.
- 15 5. Effectiveness of an endorsement, instruction, or entitlement order is determined as
16 of the date the endorsement, instruction, or entitlement order is made, and an
17 endorsement, instruction, or entitlement order does not become ineffective by
18 reason of any later change of circumstances.

19 **41-08-08. (8-108) Warranties in direct holding.**

- 20 1. A person who transfers a certificated security to a purchaser for value warrants to
21 the purchaser, and an endorser, if the transfer is by endorsement, warrants to any
22 subsequent purchaser, that:
- 23 a. The certificate is genuine and has not been materially altered;
24 b. The transferor or endorser does not know of any fact that might impair the
25 validity of the security;
26 c. There is no adverse claim to the security;
27 d. The transfer does not violate any restriction on transfer;
28 e. If the transfer is by endorsement, the endorsement is made by an appropriate
29 person, or if the endorsement is by an agent, the agent has actual authority to
30 act on behalf of the appropriate person; and
31 f. The transfer is otherwise effective and rightful.

- 1 2. A person who originates an instruction for registration of transfer of an
2 uncertificated security to a purchaser for value warrants to the purchaser that:
3 a. The instruction is made by an appropriate person, or if the instruction is by an
4 agent, the agent has actual authority to act on behalf of the appropriate
5 person;
6 b. The security is valid;
7 c. There is no adverse claim to the security; and
8 d. At the time the instruction is presented to the issuer:
9 (1) The purchaser will be entitled to the registration of transfer;
10 (2) The transfer will be registered by the issuer free from all liens, security
11 interests, restrictions, and claims other than those specified in the
12 instruction;
13 (3) The transfer will not violate any restriction on transfer; and
14 (4) The requested transfer will otherwise be effective and rightful.
15 3. A person who transfers an uncertificated security to a purchaser for value and
16 does not originate an instruction in connection with the transfer warrants that:
17 a. The uncertificated security is valid;
18 b. There is no adverse claim to the security;
19 c. The transfer does not violate any restriction on transfer; and
20 d. The transfer is otherwise effective and rightful.
21 4. A person who endorses a security certificate warrants to the issuer that:
22 a. There is no adverse claim to the security; and
23 b. The endorsement is effective.
24 5. A person who originates an instruction for registration of transfer of an
25 uncertificated security warrants to the issuer that:
26 a. The instruction is effective; and
27 b. At the time the instruction is presented to the issuer the purchaser will be
28 entitled to the registration of transfer.
29 6. A person who presents a certificated security for registration of transfer or for
30 payment or exchange warrants to the issuer that the person is entitled to the
31 registration, payment, or exchange, but a purchaser for value and without notice of

adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary endorsement.

7. If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

8. A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection 7.

9. Except as otherwise provided in subsection 7, a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections 1 through 6. A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection 1 or 2, and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer.

41-08-09. (8-109) Warranties in indirect holding.

1. A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

a. The entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

b. There is no adverse claim to the security entitlement.

2. A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account

1 makes to the securities intermediary the warranties specified in subsection 1 or 2
2 of section 41-08-08.

- 3 3. If a securities intermediary delivers a security certificate to its entitlement holder or
4 causes its entitlement holder to be registered as the owner of an uncertificated
5 security, the securities intermediary makes to the entitlement holder the warranties
6 specified in subsection 1 or 2 of section 41-08-08.

7 **41-08-10. (8-110) Applicability - Choice of law.**

- 8 1. The local law of the issuer's jurisdiction, as specified in subsection 4, governs:
9 a. The validity of a security;
10 b. The rights and duties of the issuer with respect to registration of transfer;
11 c. The effectiveness of registration of transfer by the issuer;
12 d. Whether the issuer owes any duties to an adverse claimant to a security; and
13 e. Whether an adverse claim can be asserted against a person to whom transfer
14 of a certificated or uncertificated security is registered or a person who
15 obtains control of an uncertificated security.
- 16 2. The local law of the securities intermediary's jurisdiction, as specified in
17 subsection 5, governs:
18 a. Acquisition of a security entitlement from the securities intermediary;
19 b. The rights and duties of the securities intermediary and entitlement holder
20 arising out of a security entitlement;
21 c. Whether the securities intermediary owes any duties to an adverse claimant
22 to a security entitlement; and
23 d. Whether an adverse claim can be asserted against a person who acquires a
24 security entitlement from the securities intermediary or a person who
25 purchases a security entitlement or interest therein from an entitlement
26 holder.
- 27 3. The local law of the jurisdiction in which a security certificate is located at the time
28 of delivery governs whether an adverse claim can be asserted against a person to
29 whom the security certificate is delivered.
- 30 4. "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security
31 is organized or, if permitted by the law of that jurisdiction, the law of another

jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in subdivisions b through e of subsection 1.

5. The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

a. If an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

b. If an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in subdivision a, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

c. If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subdivision a or b, the securities intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder's account.

d. If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subdivision a or b and an account statement does not identify an office serving the entitlement holder's account as provided in subdivision c, the securities intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.

6. A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other recordkeeping concerning the account.

41-08-11. (8-111) Clearing corporation rules. A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants

1 in the clearing corporation is effective even if the rule conflicts with this Act and affects another
2 party who does not consent to the rule.

3 **41-08-12. (8-112) Creditor's legal process.**

4 1. The interest of a debtor in a certificated security may be reached by a creditor only
5 by actual seizure of the security certificate by the officer making the attachment or
6 levy, except as otherwise provided in subsection 4. However, a certificated
7 security for which the certificate has been surrendered to the issuer may be
8 reached by a creditor by legal process upon the issuer.

9 2. The interest of a debtor in an uncertificated security may be reached by a creditor
10 only by legal process upon the issuer at its chief executive office in the United
11 States, except as otherwise provided in subsection 4.

12 3. The interest of a debtor in a security entitlement may be reached by a creditor only
13 by legal process upon the securities intermediary with whom the debtor's securities
14 account is maintained, except as otherwise provided in subsection 4.

15 4. The interest of a debtor in a certificated security for which the certificate is in the
16 possession of a secured party, or in an uncertificated security registered in the
17 name of a secured party, or a security entitlement maintained in the name of a
18 secured party, may be reached by a creditor by legal process upon the secured
19 party.

20 5. A creditor whose debtor is the owner of a certificated security, uncertificated
21 security, or security entitlement is entitled to aid from a court of competent
22 jurisdiction, by injunction or otherwise, in reaching the certificated security,
23 uncertificated security, or security entitlement or in satisfying the claim by means
24 allowed at law or in equity in regard to property that cannot readily be reached by
25 other legal process.

26 **41-08-13. (8-113) Statute of frauds inapplicable.** A contract or modification of a
27 contract for the sale or purchase of a security is enforceable whether or not there is a writing
28 signed or record authenticated by a party against whom enforcement is sought, even if the
29 contract or modification is not capable of performance within one year of its making.

30 **41-08-14. (8-114) Evidentiary rules concerning certificated securities.** The
31 following rules apply in an action on a certificated security against the issuer:

1. Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary endorsement is admitted.
2. If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.
3. If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.
4. If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted.

41-08-15. (8-115) Securities intermediary and others not liable to adverse

claimant. A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

1. Took the action after it had been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or
2. Acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or
3. In the case of a security certificate that has been stolen, acted with notice of the adverse claim.

41-08-16. (8-116) Securities intermediary as purchaser for value. A securities

intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary

1 acquiring the security entitlement establishes a security entitlement to the financial asset in
2 favor of an entitlement holder.

3 **41-08-17. (8-201) Issuer.**

4 1. With respect to an obligation on or a defense to a security, an "issuer" includes a
5 person who:

6 a. Places or authorizes the placing of its name on a security certificate, other
7 than as authenticating trustee, registrar, transfer agent, or the like, to
8 evidence a share, participation, or other interest in its property or in an
9 enterprise, or to evidence its duty to perform an obligation represented by the
10 certificate;

11 b. Creates a share, participation, or other interest in its property or in an
12 enterprise, or undertakes an obligation, that is an uncertificated security;

13 c. Directly or indirectly creates a fractional interest in its rights or property, if the
14 fractional interest is represented by a security certificate; or

15 d. Becomes responsible for, or in place of, another person described as an
16 issuer in this section.

17 2. With respect to an obligation on or defense to a security, a guarantor is an issuer
18 to the extent of its guaranty, whether or not its obligation is noted on a security
19 certificate.

20 3. With respect to a registration of a transfer, issuer means a person on whose behalf
21 transfer books are maintained.

22 **41-08-18. (8-202) Issuer's responsibility and defenses - Notice of defect or**
23 **defense.**

24 1. Even against a purchaser for value and without notice, the terms of a certificated
25 security include terms stated on the certificate and terms made part of the security
26 by reference on the certificate to another instrument, indenture, or document or to
27 a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent
28 the terms referred to do not conflict with terms stated on the certificate. A
29 reference under this subsection does not of itself charge a purchaser for value with
30 notice of a defect going to the validity of the security, even if the certificate
31 expressly states that a person accepting it admits notice. The terms of an

uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

2. The following rules apply if an issuer asserts that a security is not valid:

a. A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.

b. Subdivision a applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

3. Except as otherwise provided in section 41-08-21, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

4. All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

5. This section does not affect the right of a party to cancel a contract for a security "when, as and if issued" or "when distributed" in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

6. If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

1 **41-08-19. (8-203) Staleness as notice of defect or defense.** After an act or event,
2 other than a call that has been revoked, creating a right to immediate performance of the
3 principal obligation represented by a certificated security or setting a date on or after which the
4 security is to be presented or surrendered for redemption or exchange, a purchaser is charged
5 with notice of any defect in its issue or defense of the issuer, if the act or event:

- 6 1. Requires the payment of money, the delivery of a certificated security, the
7 registration of transfer of an uncertificated security, or any of them on presentation
8 or surrender of the security certificate, the money or security is available on the
9 date set for payment or exchange, and the purchaser takes the security more than
10 one year after that date; or
- 11 2. Is not covered by subsection 1 and the purchaser takes the security more than two
12 years after the date set for surrender or presentation or the date on which
13 performance became due.

14 **41-08-20. (8-204) Effect of issuer's restriction on transfer.** A restriction on transfer
15 of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person
16 without knowledge of the restriction unless:

- 17 1. The security is certificated and the restriction is noted conspicuously on the
18 security certificate; or
- 19 2. The security is uncertificated and the registered owner has been notified of the
20 restriction.

21 **41-08-21. (8-205) Effect of unauthorized signature on security certificate.** An
22 unauthorized signature placed on a security certificate before or in the course of issue is
23 ineffective, but the signature is effective in favor of a purchaser for value of the certificated
24 security if the purchaser is without notice of the lack of authority and the signing has been done
25 by:

- 26 1. An authenticating trustee, registrar, transfer agent, or other person entrusted by
27 the issuer with the signing of the security certificate or of similar security
28 certificates, or the immediate preparation for signing of any of them; or
- 29 2. An employee of the issuer, or of any of the persons listed in subsection 1,
30 entrusted with responsible handling of the security certificate.

31 **41-08-22. (8-206) Completion or alteration of security certificate.**

1 1. If a security certificate contains the signatures necessary to its issue or transfer but
2 is incomplete in any other respect:

3 a. Any person may complete it by filling in the blanks as authorized; and

4 b. Even if the blanks are incorrectly filled in, the security certificate as completed
5 is enforceable by a purchaser who took it for value and without notice of the
6 incorrectness.

7 2. A complete security certificate that has been improperly altered, even if
8 fraudulently, remains enforceable, but only according to its original terms.

9 **41-08-23. (8-207) Rights and duties of issuer with respect to registered owners.**

10 1. Before due presentment for registration of transfer of a certificated security in
11 registered form or of an instruction requesting registration of transfer of an
12 uncertificated security, the issuer or indenture trustee may treat the registered
13 owner as the person exclusively entitled to vote, receive notifications, and
14 otherwise exercise all the rights and powers of an owner.

15 2. This chapter does not affect the liability of the registered owner of a security for a
16 call, assessment, or the like.

17 **41-08-24. (8-208) Effect of signature of authenticating trustee, registrar, or**
18 **transfer agent.**

19 1. A person signing a security certificate as authenticating trustee, registrar, transfer
20 agent, or the like, warrants to a purchaser for value of the certificated security, if
21 the purchaser is without notice of a particular defect, that:

22 a. The certificate is genuine;

23 b. The person's own participation in the issue of the security is within the
24 person's capacity and within the scope of the authority received by the person
25 from the issuer; and

26 c. The person has reasonable grounds to believe that the certificated security is
27 in the form and within the amount the issuer is authorized to issue.

28 2. Unless otherwise agreed, a person signing under subsection 1 does not assume
29 responsibility for the validity of the security in other respects.

1 **41-08-25. (8-209) Issuer's lien.** A lien in favor of an issuer upon a certificated security
2 is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on
3 the security certificate.

4 **41-08-26. (8-210) Overissue.**

- 5 1. In this section, "overissue" means the issue of securities in excess of the amount
6 the issuer has corporate power to issue, but an overissue does not occur if
7 appropriate action has cured the overissue.
- 8 2. Except as otherwise provided in subsections 3 and 4, the provisions of this chapter
9 which validate a security or compel its issue or reissue do not apply to the extent
10 that validation, issue, or reissue would result in overissue.
- 11 3. If an identical security not constituting an overissue is reasonably available for
12 purchase, a person entitled to issue or validation may compel the issuer to
13 purchase the security and deliver it if certificated or register its transfer if
14 uncertificated against surrender of any security certificate the person holds.
- 15 4. If a security is not reasonably available for purchase, a person entitled to issue or
16 validation may recover from the issuer the price the person or the last purchaser
17 for value paid for it with interest from the date of the person's demand.

18 **41-08-27. (8-301) Delivery.**

- 19 1. Delivery of a certificated security to a purchaser occurs when:
- 20 a. The purchaser acquires possession of the security certificate;
- 21 b. Another person, other than a securities intermediary, either acquires
22 possession of the security certificate on behalf of the purchaser or, having
23 previously acquired possession of the certificate, acknowledges that it holds
24 for the purchaser; or
- 25 c. A securities intermediary acting on behalf of the purchaser acquires
26 possession of the security certificate, only if the certificate is in registered
27 form and has been specially endorsed to the purchaser by an effective
28 endorsement.
- 29 2. Delivery of an uncertificated security to a purchaser occurs when:
- 30 a. The issuer registers the purchaser as the registered owner, upon original
31 issue or registration of transfer; or

- 1 b. Another person, other than a securities intermediary, either becomes the
2 registered owner of the uncertificated security on behalf of the purchaser or,
3 having previously become the registered owner, acknowledges that it holds
4 for the purchaser.

5 **41-08-28. (8-302) Rights of purchaser.**

- 6 1. Except as otherwise provided in subsections 2 and 3, upon delivery of a
7 certificated or uncertificated security to a purchaser, the purchaser acquires all
8 rights in the security that the transferor had or had power to transfer.
9 2. A purchaser of a limited interest acquires rights only to the extent of the interest
10 purchased.
11 3. A purchaser of a certificated security who as a previous holder had notice of an
12 adverse claim does not improve its position by taking from a protected purchaser.

13 **41-08-29. (8-303) Protected purchaser.**

- 14 1. "Protected purchaser" means a purchaser of a certificated or uncertificated
15 security, or of an interest therein, who:
16 a. Gives value;
17 b. Does not have notice of any adverse claim to the security; and
18 c. Obtains control of the certificated or uncertificated security.
19 2. In addition to acquiring the rights of a purchaser, a protected purchaser also
20 acquires its interest in the security free of any adverse claim.

21 **41-08-30. (8-304) Endorsement.**

- 22 1. An endorsement may be in blank or special. An endorsement in blank includes an
23 endorsement to bearer. A special endorsement specifies to whom a security is to
24 be transferred or who has power to transfer it. A holder may convert a blank
25 endorsement to a special endorsement.
26 2. An endorsement purporting to be only of part of a security certificate representing
27 units intended by the issuer to be separately transferable is effective to the extent
28 of the endorsement.
29 3. An endorsement, whether special or in blank, does not constitute a transfer until
30 delivery of the certificate on which it appears or, if the endorsement is on a
31 separate document, until delivery of both the document and the certificate.

1 4. If a security certificate in registered form has been delivered to a purchaser without
2 a necessary endorsement, the purchaser may become a protected purchaser only
3 when the endorsement is supplied. However, against a transferor, a transfer is
4 complete upon delivery and the purchaser has a specifically enforceable right to
5 have any necessary endorsement supplied.

6 5. An endorsement of a security certificate in bearer form may give notice of an
7 adverse claim to the certificate, but it does not otherwise affect a right to
8 registration that the holder possesses.

9 6. Unless otherwise agreed, a person making an endorsement assumes only the
10 obligations provided in section 41-08-08 and not an obligation that the security will
11 be honored by the issuer.

12 **41-08-31. (8-305) Instruction.**

13 1. If an instruction has been originated by an appropriate person but is incomplete in
14 any other respect, any person may complete it as authorized and the issuer may
15 rely on it as completed, even though it has been completed incorrectly.

16 2. Unless otherwise agreed, a person initiating an instruction assumes only the
17 obligations imposed by section 41-08-08 and not an obligation that the security will
18 be honored by the issuer.

19 **41-08-32. (8-306) Effect of guaranteeing signature, endorsement, or instruction.**

20 1. A person who guarantees a signature of an endorser of a security certificate
21 warrants that at the time of signing:

22 a. The signature was genuine;

23 b. The signer was an appropriate person to endorse, or if the signature is by an
24 agent, the agent had actual authority to act on behalf of the appropriate
25 person; and

26 c. The signer had legal capacity to sign.

27 2. A person who guarantees a signature of the originator of an instruction warrants
28 that at the time of signing:

29 a. The signature was genuine;

30 b. The signer was an appropriate person to originate the instruction, or if the
31 signature is by an agent, the agent had actual authority to act on behalf of the

appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and

c. The signer had legal capacity to sign.

3. A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under subsection 2 and also warrants that at the time the instruction is presented to the issuer:

a. The person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and

b. The transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

4. A guarantor under subsections 1 and 2 or a special guarantor under subsection 3 does not otherwise warrant the rightfulness of the transfer.

5. A person who guarantees an endorsement of a security certificate makes the warranties of a signature guarantor under subsection 1 and also warrants the rightfulness of the transfer in all respects.

6. A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection 3 and also warrants the rightfulness of the transfer in all respects.

7. An issuer may not require a special guaranty of signature, a guaranty of endorsement, or a guaranty of instruction as a condition to registration of transfer.

8. The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An endorser or originator of an instruction whose signature, endorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor.

41-08-33. (8-307) Purchaser's right to requisites for registration of transfer.

Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain

1 registration of the transfer of the security, but if the transfer is not for value, a transferor need
2 not comply unless the purchaser pays the necessary expenses. If the transferor fails within a
3 reasonable time to comply with the demand, the purchaser may reject or rescind the transfer.

4 **41-08-34. (8-401) Duty of issuer to register transfer.**

5 1. If a certificated security in registered form is presented to an issuer with a request
6 to register transfer or an instruction is presented to an issuer with a request to
7 register transfer of an uncertificated security, the issuer shall register the transfer
8 as requested if:

- 9 a. Under the terms of the security the person seeking registration of transfer is
10 eligible to have the security registered in its name;
11 b. The endorsement or instruction is made by the appropriate person or by an
12 agent who has actual authority to act on behalf of the appropriate person;
13 c. Reasonable assurance is given that the endorsement or instruction is genuine
14 and authorized (section 41-08-35);
15 d. Any applicable law relating to the collection of taxes has been complied with;
16 e. The transfer does not violate any restriction on transfer imposed by the issuer
17 in accordance with section 41-08-20;
18 f. A demand that the issuer not register transfer has not become effective under
19 section 41-08-36, or the issuer has complied with subsection 2 of section
20 41-08-36 but no legal process or indemnity bond is obtained as provided in
21 subsection 4 of section 41-08-36; and
22 g. The transfer is in fact rightful or is to a protected purchaser.

23 2. If an issuer is under a duty to register a transfer of a security, the issuer is liable to
24 a person presenting a certificated security or an instruction for registration or to the
25 person's principal for loss resulting from unreasonable delay in registration or
26 failure or refusal to register the transfer.

27 **41-08-35. (8-402) Assurance that endorsement or instruction is effective.**

28 1. An issuer may require the following assurance that each necessary endorsement
29 or each instruction is genuine and authorized:

- 1 a. In all cases, a guaranty of the signature of the person making an
2 endorsement or originating an instruction including, in the case of an
3 instruction, reasonable assurance of identity;
4 b. If the endorsement is made or the instruction is originated by an agent,
5 appropriate assurance of actual authority to sign;
6 c. If the endorsement is made or the instruction is originated by a fiduciary
7 pursuant to subdivision d or e of subsection 1 of section 41-08-07,
8 appropriate evidence of appointment or incumbency;
9 d. If there is more than one fiduciary, reasonable assurance that all who are
10 required to sign have done so; and
11 e. If the endorsement is made or the instruction is originated by a person not
12 covered by another provision of this subsection, assurance appropriate to the
13 case corresponding as nearly as may be to the provisions of this subsection.
14 2. An issuer may elect to require reasonable assurance beyond that specified in this
15 section.
16 3. In this section:
17 a. "Appropriate evidence of appointment or incumbency" means:
18 (1) In the case of a fiduciary appointed or qualified by a court, a certificate
19 issued by or under the direction or supervision of the court or an officer
20 thereof and dated within sixty days before the date of presentation for
21 transfer; or
22 (2) In any other case, a copy of a document showing the appointment or a
23 certificate issued by or on behalf of a person reasonably believed by an
24 issuer to be responsible or, in the absence of that document or
25 certificate, other evidence the issuer reasonably considers appropriate.
26 b. "Guaranty of the signature" means a guaranty signed by or on behalf of a
27 person reasonably believed by the issuer to be responsible. An issuer may
28 adopt standards with respect to responsibility if they are not manifestly
29 unreasonable.
30 **41-08-36. (8-403) Demand that issuer not register transfer.**

- 1 1. A person who is an appropriate person to make an endorsement or originate an
2 instruction may demand that the issuer not register transfer of a security by
3 communicating to the issuer a notification that identifies the registered owner and
4 the issue of which the security is a part and provides an address for
5 communications directed to the person making the demand. The demand is
6 effective only if it is received by the issuer at a time and in a manner affording the
7 issuer reasonable opportunity to act on it.
- 8 2. If a certificated security in registered form is presented to an issuer with a request
9 to register transfer or an instruction is presented to an issuer with a request to
10 register transfer of an uncertificated security after a demand that the issuer not
11 register transfer has become effective, the issuer shall promptly communicate to
12 (a) the person who initiated the demand at the address provided in the demand
13 and (b) the person who presented the security for registration of transfer or
14 initiated the instruction requesting registration of transfer a notification stating that:
 - 15 a. The certificated security has been presented for registration of transfer or the
16 instruction for registration of transfer of the uncertificated security has been
17 received;
 - 18 b. A demand that the issuer not register transfer had previously been received;
19 and
 - 20 c. The issuer will withhold registration of transfer for a period of time stated in
21 the notification in order to provide the person who initiated the demand an
22 opportunity to obtain legal process or an indemnity bond.
- 23 3. The period described in subdivision c of subsection 2 may not exceed thirty days
24 after the date of communication of the notification. A shorter period may be
25 specified by the issuer if it is not manifestly unreasonable.
- 26 4. An issuer is not liable to a person who initiated a demand that the issuer not
27 register transfer for any loss the person suffers as a result of registration of a
28 transfer pursuant to an effective endorsement or instruction if the person who
29 initiated the demand does not, within the time stated in the issuer's communication,
30 either:

- a. Obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or
- b. File with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.

5. This section does not relieve an issuer from liability for registering transfer pursuant to an endorsement or instruction that was not effective.

41-08-37. (8-404) Wrongful registration.

1. Except as otherwise provided in section 41-08-39, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:
 - a. Pursuant to an ineffective endorsement or instruction;
 - b. After a demand that the issuer not register transfer became effective under subsection 1 of section 41-08-36 and the issuer did not comply with subsection 2 of section 41-08-36;
 - c. After the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or
 - d. By an issuer acting in collusion with the wrongdoer.
2. An issuer that is liable for wrongful registration of transfer under subsection 1 on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by section 41-08-26.
3. Except as otherwise provided in subsection 1 or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a

1 result of the registration of a transfer of a security if registration was made
2 pursuant to an effective endorsement or instruction.

3 **41-08-38. (8-405) Replacement of lost, destroyed, or wrongfully taken security**
4 **certificate.**

- 5 1. If an owner of a certificated security, whether in registered or bearer form, claims
6 that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall
7 issue a new certificate if the owner:
8 a. So requests before the issuer has notice that the certificate has been
9 acquired by a protected purchaser;
10 b. Files with the issuer a sufficient indemnity bond; and
11 c. Satisfies other reasonable requirements imposed by the issuer.
12 2. If, after the issue of a new security certificate, a protected purchaser of the original
13 certificate presents it for registration of transfer, the issuer shall register the
14 transfer unless an overissue would result. In that case, the issuer's liability is
15 governed by section 41-08-26. In addition to any rights on the indemnity bond, an
16 issuer may recover the new certificate from a person to whom it was issued or any
17 person taking under that person, except a protected purchaser.

18 **41-08-39. (8-406) Obligation to notify issuer of lost, destroyed, or wrongfully**
19 **taken security certificate.** If a security certificate has been lost, apparently destroyed, or
20 wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time
21 after the owner has notice of it and the issuer registers a transfer of the security before
22 receiving notification, the owner may not assert against the issuer a claim for registering the
23 transfer under section 41-08-37 or a claim to a new security certificate under section 41-08-38.

24 **41-08-40. (8-407) Authenticating trustee, transfer agent, and registrar.** A person
25 acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the
26 registration of a transfer of its securities, in the issue of new security certificates or
27 uncertificated securities, or in the cancellation of surrendered security certificates has the same
28 obligation to the holder or owner of a certificated or uncertificated security with regard to the
29 particular functions performed as the issuer has in regard to those functions.

30 **41-08-41. (8-501) Securities account - Acquisition of security entitlement from**
31 **securities intermediary.**

- 1 1. "Securities account" means an account to which a financial asset is or may be
2 credited in accordance with an agreement under which the person maintaining the
3 account undertakes to treat the person for whom the account is maintained as
4 entitled to exercise the rights that comprise the financial asset.
- 5 2. Except as otherwise provided in subsections 4 and 5, a person acquires a security
6 entitlement if a securities intermediary:
 - 7 a. Indicates by book entry that a financial asset has been credited to the
8 person's securities account;
 - 9 b. Receives a financial asset from the person or acquires a financial asset for
10 the person and, in either case, accepts it for credit to the person's securities
11 account; or
 - 12 c. Becomes obligated under other law, regulation, or rule to credit a financial
13 asset to the person's securities account.
- 14 3. If a condition of subsection 2 has been met, a person has a security entitlement
15 even though the securities intermediary does not itself hold the financial asset.
- 16 4. If a securities intermediary holds a financial asset for another person, and the
17 financial asset is registered in the name of, payable to the order of, or specially
18 endorsed to the other person, and has not been endorsed to the securities
19 intermediary or in blank, the other person is treated as holding the financial asset
20 directly rather than as having a security entitlement with respect to the financial
21 asset.
- 22 5. Issuance of a security is not establishment of a security entitlement.

23 **41-08-42. (8-502) Assertion of adverse claim against entitlement holder.** An
24 action based on an adverse claim to a financial asset, whether framed in conversion, replevin,
25 constructive trust, equitable lien, or other theory, may not be asserted against a person who
26 acquires a security entitlement under section 41-08-41 for value and without notice of the
27 adverse claim.

28 **41-08-43. (8-503) Property interest of entitlement holder in financial asset held by**
29 **securities intermediary.**

- 30 1. To the extent necessary for a securities intermediary to satisfy all security
31 entitlements with respect to a particular financial asset, all interests in that financial

asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in section 41-08-51.

2. An entitlement holder's property interest with respect to a particular financial asset under subsection 1 is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

3. An entitlement holder's property interest with respect to a particular financial asset under subsection 1 may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under sections 41-08-45 through 41-08-48.

4. An entitlement holder's property interest with respect to a particular financial asset under subsection 1 may be enforced against a purchaser of the financial asset or interest therein only if:

- a. Insolvency proceedings have been initiated by or against the securities intermediary;
- b. The securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;
- c. The securities intermediary violated its obligations under section 41-08-44 by transferring the financial asset or interest therein to the purchaser; and
- d. The purchaser is not protected under subsection 5.

The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

5. An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection 1, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under section 41-08-44.

41-08-44. (8-504) Duty of securities intermediary to maintain financial asset.

1. A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset.

The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

2. Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection 1.

3. A securities intermediary satisfies the duty in subsection 1 if:

a. The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

b. In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

4. This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

41-08-45. (8-505) Duty of securities intermediary with respect to payments and distributions.

1. A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

a. The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

b. In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

2. A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

41-08-46. (8-506) Duty of securities intermediary to exercise rights as directed by entitlement holder. A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

1. The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

2. In the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

41-08-47. (8-507) Duty of securities intermediary to comply with entitlement order.

1. A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

a. The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

b. In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

2. If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or

distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

41-08-48. (8-508) Duty of securities intermediary to change entitlement holder's position to other form of security holding. A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

1. The securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or
2. In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

41-08-49. (8-509) Specification of duties of securities intermediary by other statute or regulation - Manner of performance of duties of securities intermediary and exercise of rights of entitlement holder.

1. If the substance of a duty imposed upon a securities intermediary by sections 41-08-44 through 41-08-48 is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.
2. To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.
3. The obligation of a securities intermediary to perform the duties imposed by sections 41-08-44 through 41-08-48 is subject to:
 - a. Rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and

b. Rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

4. Sections 41-08-44 through 41-08-48 do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule.

41-08-50. (8-510) Rights of purchaser of security entitlement from entitlement holder.

1. An action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

2. If an adverse claim could not have been asserted against an entitlement holder under section 41-08-42, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

3. In a case not covered by the priority rules in chapter 41-09, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Purchasers who have control rank equally, except that a securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

41-08-51. (8-511) Priority among security interests and entitlement holders.

1. Except as otherwise provided in subsections 2 and 3, if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

2. A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the

securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

3. If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders.

41-08-52. (8-603) Savings clause.

1. This Act does not affect an action or proceeding commenced before this Act takes effect.
2. If a security interest in a security is perfected at the date this Act takes effect and the action by which the security interest was perfected would suffice to perfect a security interest under this Act, no further action is required to continue perfection. If a security interest in a security is perfected at the date this Act takes effect but the action by which the security interest was perfected would not suffice to perfect a security interest under this Act, the security interest remains perfected for a period of six months after the effective date and continues perfected thereafter if appropriate action to perfect under this Act is taken within that period. If a security interest is perfected at the date this Act takes effect and the security interest can be perfected by filing under this Act, a financing statement signed by the secured party instead of the debtor may be filed within that period to continue perfection or thereafter to perfect.

SECTION 8. AMENDMENT. Subsection 6 of section 41-09-03 of the 1995

Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. ~~Uncertificated securities. The law, including the conflict of laws rules, of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or nonperfection of a security interest in uncertificated securities.~~

Investment property:

- a. This subsection applies to investment property.
- b. Except as otherwise provided in subdivision f, during the time that a security certificate is located in a jurisdiction, perfection of a security interest, the

1 effect of perfection or nonperfection, and the priority of a security interest in
2 the certificated security represented thereby are governed by the local law of
3 that jurisdiction.

4 c. Except as otherwise provided in subdivision f, perfection of a security interest,
5 the effect of perfection or nonperfection, and the priority of a security interest
6 in an uncertificated security are governed by the local law of the issuer's
7 jurisdiction as specified in subsection 4 of section 41-08-10.

8 d. Except as otherwise provided in subdivision f, perfection of a security interest,
9 the effect of perfection or nonperfection, and the priority of a security interest
10 in a security entitlement or securities account are governed by the local law of
11 the securities intermediary's jurisdiction as specified in subsection 5 of section
12 41-08-10.

13 e. Except as otherwise provided in subdivision f, perfection of a security interest,
14 the effect of perfection or nonperfection, and the priority of a security interest
15 in a commodity contract or commodity account are governed by the local law
16 of the commodity intermediary's jurisdiction. The following rules determine a
17 "commodity intermediary's jurisdiction" for purposes of this subdivision:

18 (1) If an agreement between the commodity intermediary and commodity
19 customer specifies that it is governed by the law of a particular
20 jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

21 (2) If an agreement between the commodity intermediary and commodity
22 customer does not specify the governing law as provided in
23 paragraph 1, but expressly specifies that the commodity account is
24 maintained at an office in a particular jurisdiction, that jurisdiction is the
25 commodity intermediary's jurisdiction.

26 (3) If an agreement between the commodity intermediary and commodity
27 customer does not specify a jurisdiction as provided in paragraph 1
28 or 2, the commodity intermediary's jurisdiction is the jurisdiction in
29 which is located the office identified in an account statement as the
30 office serving the commodity customer's account.

(4) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in paragraph 1 or 2 and an account statement does not identify an office serving the commodity customer's account as provided in paragraph 3, the commodity intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the commodity intermediary.

f. Perfection of a security interest by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located.

SECTION 9. AMENDMENT. Section 41-09-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-09-05. (9-105) Definitions and index of definitions.

1. In this chapter unless the context otherwise requires:

- a. "Account debtor" means the person who is obligated on an account, chattel paper, or general intangible.
- b. "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods; ¹ but a charter or other contract involving the use or hire of a vessel is not a chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper.
- c. "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold.
- d. "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not ~~he~~ the person owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the chapter

1 dealing with the collateral, the obligor in any provision dealing with the
2 obligation, and may include both where the context so requires.

3 e. "Deposit account" means a demand, time, savings, passbook, or like account
4 maintained with a bank, savings and loan association, credit union, or like
5 organization, other than an account evidenced by a certificate of deposit.

6 f. "Document" means document of title as defined in the general definitions of
7 chapter 41-01 (section 41-01-11), and a receipt of the kind described in
8 subsection 2 of section 41-07-07.

9 g. "Encumbrance" includes real estate mortgages and other liens on real estate
10 and all other rights in real estate that are not ownership interests.

11 h. "Goods" includes all things which are movable at the time the security interest
12 attaches or which are fixtures (section 41-09-34), but does not include money,
13 documents, instruments, investment property, accounts, chattel paper,
14 general intangibles, or minerals or the like (including oil and gas) before
15 extraction. "Goods" also include standing timber which is to be cut and
16 removed under a conveyance or contract for sale, the unborn young of
17 animals, and growing crops.

18 i. "Instrument" means a negotiable instrument (defined in section 41-03-04), ~~a~~
19 ~~certificated security (defined in section 41-08-02)~~, or any other writing that
20 evidences a right to the payment of money and is not itself a security
21 agreement or lease and is of a type that in the ordinary course of business is
22 transferred by delivery with any necessary endorsement or assignment. The
23 term does not include investment property.

24 j. "Mortgage" means a consensual interest created by a real estate mortgage, a
25 trust deed on real estate, or the like.

26 k. An advance is made "pursuant to commitment" if ~~the a~~ a secured party ~~has~~
27 ~~bound himself~~ binds itself to make it, whether or not a subsequent event of
28 default or other event not within ~~his~~ a secured party's control has relieved or
29 may relieve ~~him~~ it from ~~his~~ its obligation.

30 l. "Secured party" means a lender, seller, or other person in whose favor there
31 is a security interest, including a person to whom accounts or chattel paper

- 1 have been sold. When the holders of obligations issued under an indenture
2 of trust, equipment trust agreement, or the like are represented by a trustee or
3 other person, the representative is the secured party.
- 4 m. "Security agreement" means an agreement which creates or provides for a
5 security interest.
- 6 n. "Transmitting utility" means any person primarily engaged in the railroad, or
7 street railway or trolley bus business, the electric or electronics
8 communications transmission business, the transmission of goods by
9 pipeline, or the transmission or the production and transmission of electricity,
10 steam, gas or water, or the provision of sewer service.
- 11 2. Other definitions applying to this chapter and the sections in which they appear
12 are:
- 13 a. "Account". Section 41-09-06.
14 b. "Attach". Section 41-09-16.
15 c. "Commodity contract". Section 41-09-15.
16 d. "Commodity customer". Section 41-09-15.
17 e. "Commodity intermediary". Section 41-09-15.
18 f. "Construction mortgage". Subsection 1 of section 41-09-34.
19 ~~e~~ g. "Consumer goods". Subsection 1 of section 41-09-09.
20 h. "Control". Section 41-09-15.
21 ~~e~~ i. "Equipment". Subsection 2 of section 41-09-09.
22 ~~f~~ j. "Farm products". Subsection 3 of section 41-09-09.
23 ~~g~~ k. "Fixture filing". Section 41-09-34.
24 ~~h~~ l. "Fixtures". Section 41-09-34.
25 ~~i~~ m. "General intangibles". Section 41-09-06.
26 ~~j~~ n. "Inventory". Subsection 4 of section 41-09-09.
27 o. "Investment property". Section 41-09-15.
28 ~~k~~ p. "Lien creditor". Subsection 3 of section 41-09-22.
29 ~~l~~ q. "Proceeds". Subsection 1 of section 41-09-27.
30 ~~m~~ r. "Purchase money security interest". Section 41-09-07.
31 ~~n~~ s. "Real estate interest". Section 41-09-34.

1	e. <u>t.</u>	"United States".	Section 41-09-03.
2	3.	The following definitions in other chapters apply to this chapter:	
3	a.	<u>"Broker"</u> .	<u>Section 41-08-02.</u>
4	b.	<u>"Certificated security"</u> .	<u>Section 41-08-02.</u>
5	c.	<u>"Check"</u> .	Section 41-03-04.
6	d.	<u>"Clearing corporation"</u> .	<u>Section 41-08-02.</u>
7	b. <u>e.</u>	<u>"Contract for sale"</u> .	Section 41-02-06.
8	f.	<u>"Control"</u> .	<u>Section 41-08-06.</u>
9	g.	<u>"Delivery"</u> .	<u>Section 41-08-27.</u>
10	h.	<u>"Entitlement holder"</u> .	<u>Section 41-08-02.</u>
11	i.	<u>"Financial asset"</u> .	<u>Section 41-08-02.</u>
12	e. <u>j.</u>	<u>"Holder in due course"</u> .	Section 41-03-28.
13	e. <u>k.</u>	<u>"Note"</u> .	Section 41-03-04.
14	e. <u>l.</u>	<u>"Sale"</u> .	Section 41-02-06.
15	m.	<u>"Securities intermediary"</u> .	<u>Section 41-08-02.</u>
16	n.	<u>"Security"</u> .	<u>Section 41-08-02.</u>
17	o.	<u>"Security certificate"</u> .	<u>Section 41-08-02.</u>
18	p.	<u>"Security entitlement"</u> .	<u>Section 41-08-02.</u>
19	q.	<u>"Uncertificated security"</u> .	<u>Section 41-08-02.</u>

20 4. In addition, chapter 41-01 contains general definitions and principles of
21 construction and interpretation applicable throughout this chapter.

22 **SECTION 10. AMENDMENT.** Section 41-09-06 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **41-09-06. (9-106) "Account" and "general intangibles" defined.** "Account" means
25 any right to payment for goods sold or leased or for services rendered which is not evidenced
26 by an instrument or chattel paper whether or not it has been earned by performance. "General
27 intangibles" means any personal property (including things in action) other than goods,
28 accounts, chattel paper, documents, instruments, investment property, and money. All rights to
29 payment earned or unearned under a charter or other contract involving the use or hire of a
30 vessel and all rights incident to the charter or contract are accounts.

1 **SECTION 11.** A new section to chapter 41-09 of the North Dakota Century Code is
2 created and enacted as follows:

3 **(9-115) Investment property.**

4 1. In this chapter:

- 5 a. "Commodity account" means an account maintained by a commodity
6 intermediary in which a commodity contract is carried for a commodity
7 customer.
- 8 b. "Commodity contract" means a commodity futures contract, an option on a
9 commodity futures contract, a commodity option, or other contract that, in
10 each case, is:
- 11 (1) Traded on or subject to the rules of a board of trade that has been
12 designated as a contract market for such a contract pursuant to the
13 federal commodities laws; or
- 14 (2) Traded on a foreign commodity board of trade, exchange, or market,
15 and is carried on the books of a commodity intermediary for a
16 commodity customer.
- 17 c. "Commodity customer" means a person for whom a commodity intermediary
18 carries a commodity contract on its books.
- 19 d. "Commodity intermediary" means:
- 20 (1) A person who is registered as a futures commission merchant under
21 the federal commodities laws; or
- 22 (2) A person who in the ordinary course of business provides clearance or
23 settlement services for a board of trade that has been designated as a
24 contract market pursuant to the federal commodities laws.
- 25 e. "Control" with respect to a certificated security, uncertificated security, or
26 security entitlement has the meaning specified in section 41-08-06. A
27 secured party has control over a commodity contract if by agreement among
28 the commodity customer, the commodity intermediary, and the secured party,
29 the commodity intermediary has agreed that it will apply any value distributed
30 on account of the commodity contract as directed by the secured party
31 without further consent by the commodity customer. If a commodity customer

1 grants a security interest in a commodity contract to its own commodity
2 intermediary, the commodity intermediary as secured party has control. A
3 secured party has control over a securities account or commodity account if
4 the secured party has control over all security entitlements or commodity
5 contracts carried in the securities account or commodity account.

6 f. "Investment property" means:

7 (1) A security, whether certificated or uncertificated;

8 (2) A security entitlement;

9 (3) A securities account;

10 (4) A commodity contract; or

11 (5) A commodity account.

12 2. Attachment or perfection of a security interest in a securities account is also
13 attachment or perfection of a security interest in all security entitlements carried in
14 the securities account. Attachment or perfection of a security interest in a
15 commodity account is also attachment or perfection of a security interest in all
16 commodity contracts carried in the commodity account.

17 3. A description of collateral in a security agreement or financing statement is
18 sufficient to create or perfect a security interest in a certificated security,
19 uncertificated security, security entitlement, securities account, commodity
20 contract, or commodity account whether it describes the collateral by those terms,
21 or as investment property, or by description of the underlying security, financial
22 asset, or commodity contract. A description of investment property collateral in a
23 security agreement or financing statement is sufficient if it identifies the collateral
24 by specific listing, by category, by quantity, by a computational or allocational
25 formula or procedure, or by any other method, if the identity of the collateral is
26 objectively determinable.

27 4. Perfection of a security interest in investment property is governed by the following
28 rules:

29 a. A security interest in investment property may be perfected by control. A
30 secured creditor that obtains control over any investment property to perfect a
31 security interest as provided by this chapter, by virtue of that conduct alone,

1 does not control a debtor for any purpose under the federal bankruptcy code
2 [11 U.S.C.].

3 b. Except as otherwise provided in subdivisions c and d, a security interest in
4 investment property may be perfected by filing.

5 c. If the debtor is a broker or securities intermediary, a security interest in
6 investment property is perfected when it attaches. The filing of a financing
7 statement with respect to a security interest in investment property granted by
8 a broker or securities intermediary has no effect for purposes of perfection or
9 priority with respect to that security interest.

10 d. If a debtor is a commodity intermediary, a security interest in a commodity
11 contract or a commodity account is perfected when it attaches. The filing of a
12 financing statement with respect to a security interest in a commodity contract
13 or a commodity account granted by a commodity intermediary has no effect
14 for purposes of perfection or priority with respect to that security interest.

15 5. Priority between conflicting security interests in the same investment property is
16 governed by the following rules:

17 a. A security interest of a secured party who has control over investment
18 property has priority over a security interest of a secured party who does not
19 have control over the investment property.

20 b. Except as otherwise provided in subdivisions c and d, conflicting security
21 interests of secured parties each of whom has control rank equally.

22 c. Except as otherwise agreed by the securities intermediary, a security interest
23 in a security entitlement or a securities account granted to the debtor's own
24 securities intermediary has priority over any security interest granted by the
25 debtor to another secured party.

26 d. Except as otherwise agreed by the commodity intermediary, a security
27 interest in a commodity contract or a commodity account granted to the
28 debtor's own commodity intermediary has priority over any security interest
29 granted by the debtor to another secured party.

30 e. Conflicting security interests granted by a broker, a securities intermediary, or
31 a commodity intermediary which are perfected without control rank equally.

f. In all other cases, priority between conflicting security interests in investment property is governed by subsections 5, 6, and 7 of section 41-09-33.

Subsection 4 of section 41-09-33 does not apply to investment property.

6. If a security certificate in registered form is delivered to a secured party pursuant to agreement, a written security agreement is not required for attachment or enforceability of the security interest, delivery suffices for perfection of the security interest, and the security interest has priority over a conflicting security interest perfected by means other than control, even if a necessary endorsement is lacking.

SECTION 12. A new section to chapter 41-09 of the North Dakota Century Code is created and enacted as follows:

(9-116) Security interest arising in purchase or delivery of financial asset.

1. If a person buys a financial asset through a securities intermediary in a transaction in which the buyer is obligated to pay the purchase price to the securities intermediary at the time of the purchase, and the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary, the securities intermediary has a security interest in the buyer's security entitlement securing the buyer's obligation to pay. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

2. If a certificated security or other financial asset represented by a writing which in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment is delivered pursuant to an agreement between persons in the business of dealing with such securities or financial assets and the agreement calls for delivery versus payment, the person delivering the certificate or other financial asset has a security interest in the certificated security or other financial asset securing the seller's right to receive payment. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

SECTION 13. AMENDMENT. Subsection 1 of section 41-09-16 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1 1. Subject to the provisions of section 41-04-22 on the security interest of the
2 collecting bank, ~~section 41-08-36.4~~ sections 11 and 12 of this Act on security
3 interests in ~~securities~~ investment property, and section 41-09-13 on a security
4 interest arising under the chapters on sales and leases, a security interest is not
5 enforceable against the debtor or third parties with respect to the collateral and
6 does not attach unless all of the following take place:

- 7 a. The collateral is in the possession of the secured party pursuant to
8 agreement, the collateral is investment property and the secured party has
9 control pursuant to agreement, or the debtor has signed a security agreement
10 that contains a description of the collateral and, in addition, if the security
11 interest covers crops growing or to be grown or timber to be cut, a description
12 of the land concerned.
13 b. Value has been given.
14 c. The debtor has rights in the collateral.

15 **SECTION 14. AMENDMENT.** Subsection 4 of section 41-09-16 of the 1995
16 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 17 4. A transaction, although subject to this chapter, is also subject to chapters ~~40-18.1,~~
18 13-03, 35-05, 49-09, and 51-13, and in the case of conflict between the provisions
19 of this chapter and any such statute, the provisions of such statute control. Failure
20 to comply with any applicable statute has only the effect which is specified therein.

21 **SECTION 15. AMENDMENT.** Subdivision d of subsection 1 of section 41-09-22 of the
22 North Dakota Century Code is amended and reenacted as follows:

- 23 d. In the case of accounts ~~and~~, general intangibles, and investment property, a
24 person who is not a secured party and who is a transferee to the extent that
25 he person gives value without knowledge of the security interest and before it
26 is perfected.

27 **SECTION 16. AMENDMENT.** Subsection 1 of section 41-09-23 of the 1995
28 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 29 1. A financing statement must be filed to perfect all security interests except the
30 following:

- a. A security interest in collateral in possession of the secured party under section 41-09-26.
- b. A security interest temporarily perfected in instruments, certificated securities, or documents without delivery under section 41-09-25 or in proceeds for a ten-day period under section 41-09-27.
- c. A security interest created by an assignment of a beneficial interest in a trust or a decedent's estate.
- d. A purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered and fixture filing is required for priority over a conflicting real estate interest in a fixture to the extent provided in section 41-09-34.
- e. An assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor.
- f. A security interest of a collecting bank (section 41-04-22) or ~~in securities (section 41-08-36.1)~~ or arising under the chapters on sales and leases (section 41-09-13) or covered in subsection 3.
- g. An assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.
- h. A security interest in investment property which is perfected without filing under section 11 or 12 of this Act.

SECTION 17. AMENDMENT. Subsection 1 of section 41-09-24 of the North Dakota Century Code is amended and reenacted as follows:

1. A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. ~~Such~~ These steps are specified in sections 11 of this Act, 41-09-23, 41-09-25, 41-09-26, and 41-09-27. If ~~such~~ these steps are taken before the security interest attaches, it is perfected at the time when it attaches.

SECTION 18. AMENDMENT. Section 41-09-25 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-09-25. (9-304) Perfection of security interest in instruments, documents, and goods covered by documents - Perfection by permissive filing - Temporary perfection without filing or transfer of possession.

1. A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments, other than ~~certificated securities~~ or instruments that constitute part of chattel paper, can be perfected only by the secured party's taking possession, except as provided in subsections 4 and 5 of this section and subsections 2 and 3 of section 41-09-27.
2. During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during that period is subject thereto.
3. A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.
4. A security interest in a negotiable document or ~~an instrument other than a~~ certificated security is perfected without filing or the taking of possession for a period of twenty-one days after it attaches to the extent that it arises for new value given under a written security agreement.
5. A security interest remains perfected for a period of twenty-one days without filing if a secured party having a perfected security interest in a negotiable document, ~~an instrument other than a~~ certificated security, or goods in possession of a bailee other than one who has issued a negotiable document therefor:
 - a. Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subsection 3 of section 41-09-33; or

b. Delivers the instrument or certificated security to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal, or registration of transfer.

6. After the twenty-one-day period in subsections 4 and 5, perfection depends upon compliance with applicable provisions of this chapter.

SECTION 19. AMENDMENT. Section 41-09-26 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-09-26. (9-305) When possession by secured party perfects security interest without filing. A security interest in letters of credit and advices of credit (subdivision a of subsection 2 of section 41-05-16), goods, instruments ~~other than certificated securities~~, money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. If the collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this chapter. The security interest may be otherwise perfected as provided in this chapter before or after the period of possession by the secured party.

SECTION 20. AMENDMENT. Subsections 1 and 3 of section 41-09-27 of the North Dakota Century Code are amended and reenacted as follows:

1. "Proceeds" includes whatever is received upon the sale, exchange, collection, or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Any payments or distributions made with respect to investment property collateral are proceeds. Money, checks, deposit accounts, and the like are "cash proceeds". All other proceeds are "noncash proceeds".
3. The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless:

- a. A filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds;
- b. A filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; ~~or~~
- c. The original collateral was investment property and the proceeds are identifiable cash proceeds; or
- d. The security interest in the proceeds is perfected before the expiration of the ten-day period.

Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this chapter for original collateral of the same type.

SECTION 21. AMENDMENT. Section 41-09-30 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-09-30. (9-309) Protection of purchasers of instruments, documents, and securities. Nothing in this chapter limits the rights of a holder in due course of a negotiable instrument (section 41-03-28) or a holder to whom a negotiable document of title has been duly negotiated (section 41-07-30) or a ~~bona-fide protected~~ purchaser of a security (section ~~41-08-18~~ 41-08-29) and those holders or purchasers take priority over an earlier security interest even though perfected. Filing under this chapter does not constitute notice of the security interest to those holders or purchasers.

SECTION 22. AMENDMENT. Subsections 1 and 7 of section 41-09-33 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. The rules of priority stated in other sections of this part and in the following sections shall govern when applicable: section ~~41-04-22~~ 41-04-26 with respect to the security interests of collecting banks in items being collected, accompanying documents, and proceeds; section 41-09-03 on security interests related to other jurisdictions; ~~and~~ section 41-09-14 on consignments; and section 11 of this Act on security interests in investment property.

1 7. If future advances are made while a security interest is perfected by filing, the
2 taking of possession, or under section ~~41-08-36.1 on securities~~ 11 or 12 of this Act
3 on investment property, the security interest has the same priority for the purposes
4 of subsection 5 or subsection 5 of section 11 of this Act with respect to the future
5 advances as it does with respect to the first advance. If a commitment is made
6 before or while the security interest is so perfected, the security interest has the
7 same priority with respect to advances made pursuant thereto. In other cases, a
8 perfected security interest has priority from the date the advance is made.

9 **SECTION 23. REPEAL.** Chapters 10-18.1 and 41-08 of the North Dakota Century
10 Code are repealed.